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August 19, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, DC 20554

Attention: Wireline Competition Bureau

Re: Joint Petition for Expedited Waiver, RM No. 10603
(filed 8/19/03)

Dear Ms. Dortch:

The Eastern Rural Telecom Association (ERTA), Independent Telephone and Telecommunications Association (ITTA), John Staurulakis Inc. (JSI), Matanuska Telephone Association, Inc., National Exchange Carrier Association, Inc. (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), TDS Telecom (TDS), United States Telecom Association (USTA), and the Western Alliance (collectively the "Associations") filed a Joint Petition for Expedited Waiver of Section 69.104 of the Commission's rules on August 19, 2003 via ECFS. The F.C.C. Form 159 and the required $695.00 filing fee are being delivered via overnight service to the Mellon Bank in Pittsburgh, Pennsylvania.

Acknowledgment and date of receipt of this filing fee by Mellon Bank are requested. A duplicate copy of the letter is provided for this purpose.

All correspondence and inquiries concerning this filing should be directed to me at the above address and phone number.

Sincerely,

/s/ Richard A. Askoff

Attachment:
Joint Petition for Expedited Waiver

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
National Exchange Carrier Association, Inc.	)	
	)	RM No. 10603
Petition to Amend Section 69.104 of the Commission's Rules	)	
	)	

JOINT PETITION FOR EXPEDITED WAIVER

An anomaly in the Commission's current access charge rules requires telephone companies to overcharge customers of channelized T-1 services. The rules require companies to assess up to 24 End User common Line (EUCL) charges per month on customers of these services. Yet, the evidence shows that the cost of providing these services warrant assessment of at most 5 EUCL charges.

The Commission has already corrected this problem for functionally-equivalent ISDN services. But ISDN technology isn't available in most rural areas, and would be uneconomical for most small companies and their customers to install. Recognizing the need for change, the Wireline Competition Bureau staff recommended that the Commission open a proceeding to amend the rule.[1] NECA filed a request for such a rulemaking in September 2002, nearly a year ago. But the Commission has yet to take action on NECA's petition.

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[1] Wireline Competition Bureau, Biennial Regulatory Review 2002, *Staff Report*, WC Docket No. 02-313, GC Docket No. 02-390, 18 FCCRcd 4622 (2003) (rel. Mar. 14, 2003) (*WCB Staff Report*) at 102.

Accordingly, the following telephone companies, consultants and associations respectfully request that the Commission grant an expedited interim waiver of the EUCL assessment rule:

- The Eastern Rural Telecom Association (ERTA);
- The Independent Telephone & Telecommunications Alliance (ITTA);
- John Staurulakis Incorporated (JSI);
- Matanuska Telephone Association, Inc.;
- The National Exchange Carrier Association, Inc. (NECA);
- The National Telecommunications Cooperative Association (NTCA);
- The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO);
- TDS Telecom (TDS);
- The United States Telecom Association (USTA); and
- The Western Alliance.

Specifically, these telephone industry groups (collectively, the "Associations") on behalf of their constituent telephone companies seek an interim waiver of section 69.104[2] of the Commission's rules to reduce the number of End User Common Line (EUCL) charges carriers must assess on customers ordering channelized T-1 service. Waiver is needed pending Commission consideration of broader issues in a rulemaking proceeding, as recommended by the Bureau in its 2002 Biennial Review *Staff Report*.

I. INTRODUCTION

The current EUCL charges (also commonly referred to as Subscriber Line Charges or SLCs) for customer-ordered exchange access service provisioned using digital, high capacity T-1 interfaces (i.e., 1.544 Mbps digital circuit interfaces) for which the customer supplies the terminating channelization equipment ("channelized T-1 services")[3] are not aligned with costs and therefore impose overcharges on the customers of these services.

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[2] 47 C.F.R. § 69.104.

[3] This exchange access service is often sold under the name Digital Transport Service (DTS).

NECA filed a *Petition for Rulemaking*[4] in September 2002 to address this situation, asking the Commission to amend section 69.104 to afford channelized T-1 services the same treatment as functionally similar Primary Rate Interface (PRI) Integrated Services Digital Network (ISDN) services for purposes of assessing SLC charges. Such treatment more closely reflects the actual non-traffic sensitive (NTS) common line costs incurred by NECA pool participants in providing these circuits. Industry participants have submitted data indicating that the NTS costs of channelized T-1 services are adequately recovered by no more than five SLCs, and that, in fact, the actual cost relationship may be somewhat lower than the proposed 5:1 ratio.

In October 2002, NECA renewed its request in the context of the Commission's 2002 biennial regulatory review.[5] WCB staff recommendations, released in December 2002, supported the initiation of a rulemaking proceeding, finding "the rules regarding limits on the EUCL charges applicable to T-1 exchange access services in their current form may not be necessary in the public interest as a result of meaningful economic competition." [6] However, the Commission has yet to take action.

Without comparable EUCL treatment to PRI ISDN service, the customers of similarly derived T-1 channel services are saddled with SLC burdens that far exceed the NTS loop costs of the service provided. Unequal SLC treatment creates an artificial price incentive for subscribers to choose ISDN over similar services that may be a more efficient choice from a technology deployment perspective. Additionally, the current rules unfairly

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[4] National Exchange Carrier Association, Inc. Petition to Amend Section 69.104 of the Commission's Rules, *Petition for Rulemaking* (Sept. 26, 2002) (*Petition*).

[5] *Comments* of NECA, Biennial Review 2002, WC Docket No. 02-313 (Oct. 18, 2002) at 16.

[6] *WCB Staff Report* at 102

burden customers in rural areas where ISDN is not generally available and may, in some cases, discourage rural businesses from ordering high capacity services. Further delay in changing the rules will only exacerbate problems as facility investment decisions are made to meet current market demand.

The Associations request that the Commission grant a limited waiver of section 69.104 pending resolution of issues to be considered in the recommended rulemaking proceeding. Grant of the waiver to permit application of T-1 SLCs in a manner consistent with the SLC treatment for functionally similar PRI ISDN would correct the current imbalance pending Commission consideration of whether further reductions are warranted.

II. CURRENT RULES IMPOSE OVERCHARGES ON CUSTOMERS OF T-1 SERVICES

With the exception of ISDN services, current Commission rules require the assessment of one SLC for each derived channel provided by an ILEC for local exchange service, or up to 24 SLCs per T-1 facility.[7] In contrast, Commission rules permit the assessment of no more than 5 SLCs for PRI ISDN circuits, which consist of 23 voice-grade-equivalent channels and one data signaling channel. As a result of this disparity,

[7] When the Commission initially adopted 69.104, it did not specifically address the application of SLCs to derived channel facilities. The Commission's interpretation of the rules as it applies to derived channel services is based on the Part 36 definitions of "subscriber line" as a "communication channel between a telephone station, PBX or TWX station and the central office which it serves" and "channel" as "an electrical path suitable for the transmission of communications between two or more points." *See* NYNEX Telephone Companies, Revision to Tariff F.C.C. No. 1, Transmittal No. 116, *Memorandum Opinion and Order*, 7 FCC Rcd 7938 (1992).

interstate charges related to the T-1 loop may be up to three times or $150 higher than PRI-ISDN (including the port charge).[8]

The Commission based its determination to amend its Part 69 rules for ISDN SLCs on an analysis of the ratio of the NTS loop costs of ISDN, excluding switching costs, compared to the NTS costs of single channel analog services. Based on cost data submitted by the RBOCs, the Commission found this ratio to be approximately 5 to 1. The Commission concluded that the SLC-per-derived channel rule "artificially discourages efficient use of ISDN" by requiring LECs to assess charges that are not related to the NTS costs of the service provided[9] and modified its rules to permit ILECs to assess no more than 5 SLCs for PRI ISDN. Although the Commission noted that other derived channel services might also warrant a deviation from the general rule of one SLC per channel, it limited its decision to ISDN service, explaining that the record did not contain sufficient information to allow it to determine the relative NTS costs of derived channel services other than ISDN.[10]

However, information provided by NECA and industry commenters in support of the *Petition for Rulemaking* reports that the derived channel T-1 services and PRI ISDN

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[8] For illustrative purposes, the maximum Multiline Business SLC of $9.20 and ISDN line port charge of $23.51 is used in this example. *See* NECA FCC Tariff No. 5, Sections 17.1.2 and 17.1.4.

[9] *See* Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Transport Rate Structure and Pricing, CC Docket No. 91-213, End User Common Line Charges, CC Docket No. 95-72, *First Report and Order*, 12 FCC Rcd 15982 (1997) (*First Report and Order*) at ¶ 115.

[10] *First Report and Order* at ¶ 120.

have identical underlying loop configurations and are provisioned in the same manner.[11] Since the underlying loop configurations are identical for both services, it follows that the NTS loop costs of channelized T-1 services, excluding switching costs, are the same as PRI ISDN, thus warranting the same SLC treatment for channelized T-1 service as the Commission's rules prescribe for ISDN. Since the NTS loop costs associated with each service are virtually identical, "there is no logical reason to require customers purchasing DTS to pay more in end user charges than customers purchasing PRI ISDN service."[12]

In addition to provisioning information, NECA also provided the Commission with a cost analysis using Common Line pool cost data from NECA's 2002 annual access filing, which showed that the relative cost of the T-1 loop as compared to a voice grade analog loop, or POTS loop, is 3.76 to 1 for pool members.[13] A separate study by TDS Telecom (TDS) of 300 sample loops in Tennessee and Michigan yielded a cost ratio of 4.02 to 1, thus confirming that it is reasonable to assume that the ratio of T-1 loop costs to POTS loop costs is 5 to 1 or less.[14] Lower loop cost ratios can be attributed, in part, to advancements in loop technology that lower provisioning costs. For example, many rural ILECs are now deploying HDSL2 technology,[15] which allows the provisioning of T-1 and

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[11] *Reply Comments* of NECA, RM 10603 (Dec. 16, 2002) at 2; *Comments* of TDS Telecommunications Corp., RM 10603 (Dec. 2, 2002) at 2-3; and *Comments* of ALLTEL Communications, Inc., RM 10603 (Dec. 2, 2002) at 4.

[12] *Reply Comments* of CenturyTel., RM 10603 (Dec. 16, 2002) at 3 (*CenturyTel Reply*).

[13] Letter from Colin Sandy, NECA to Marlene H. Dortch, FCC, RM No. 10603 (Feb. 27, 2003) at 3, calculating T-1:POTS loop cost ratio of 3.76:1 (*Feb. 2003 Ex Parte Letter*). This information has been updated with data from the NECA's 2003 annual access tariff filing (Exhibit 1); the T-1:POTS loop cost ratio remains the same.

[14] *Feb. 2003 Ex Parte Letter* at 4, calculating T-1:POTS loop cost ration of 4.02:1.

[15] Some companies report as much as 80% of new T-1 circuits are provisioned using HDSL2 technology.

ISDN circuits over a single two-wire loop, instead of "two pairs of twisted copper wires" as was the standard when the original RBOC cost studies were compiled.[16] Therefore, if the RBOC cost studies were redone today to reflect this technology advancement, it is likely that they would produce ratios less than 5 to 1.

Based on provisioning and cost information, it is apparent that the NTS costs of channelized T-1 circuits are adequately recovered by no more than five SLCs and that the Commission's current rules requiring one SLC for each derived channel for all services except ISDN unfairly impose excessive SLC charges on users of channelized T-1 services.

III. THE CURRENT RULES CREATE ARTIFICIAL, UNECONOMIC INCENTIVES FOR CUSTOMERS AND CARRIERS

Rates set well above costs send the wrong price signals to the marketplace. In this instance, the unequal SLC treatment of T-1 vs. ISDN services creates an artificial incentive for subscribers to choose ISDN over similar services that may be a more efficient choice from a technology deployment perspective. In some cases, if ISDN is not available as an alternative,[17] rural customers may have no option to obtain high-capacity services at reasonable, cost-based rates and may be discouraged from ordering high capacity service at all due to the excessive cost.[18] Alternatively, carriers may be forced to build out ISDN infrastructure unnecessarily to satisfy customer demand for a more attractive pricing option.

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[16] *First Report and Order* at ¶ 111.

[17] Only 170 of over 1000 companies in the NECA pool offer PRI ISDN service. Not all rural carriers offer ISDN due to high vendor fees for the software necessary to provision ISDN-PRIs in a switch. Recovery of these fixed costs from a limited customer base in rural areas may make the service too expensive to attract customers.

[18] *CenturyTel Reply* at 4. CenturyTel notes that some customers have dropped Centrex service because of the recent SLC increases.

Furthermore, based on reports from several NECA member companies, small independent telephone companies are actually losing customers as they relocate their facilities to non-NECA tariff areas where they can take advantage of lower rates, due in part to a lower number of SLCs applied to the service.[19] Equal regulatory treatment for comparable services is necessary to provide carriers with the ability to manage their networks more efficiently while providing consumers access to comparable services at comparable prices.

IV. THE IMPACT OF THE WAIVER WOULD BE MINIMAL

NECA estimates that the reduction in SLC revenue resulting from approval of this waiver would be approximately $13 million per year based on Rate Development Task Force (RDTF)[20] data from which NECA projects a reduction in SLC revenues of 1.4% as a result of the proposed rule change.[21] The reduction in SLC charges would be offset in part by estimated port revenues of $1.5 million.[22] The difference, or $11.5 million, would be

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[19] For example, *see* Sprint Local Telephone Companies Tariff F.C.C. No. 3, page 4-9.1, "When a business end user is provided derived voice channels over a 2-wire facility used in conjunction with Digital Subscriber Line Technology, the EUCL Multi-line Business Subscriber line or trunk rate and the PICC Multiline Business rate set forth in 4.7 following shall apply on the main telephone number of each facility on which derived voice channels are provided. EUCL charges shall not apply on the individual derived voice channels."

[20] The Rate Development Task Force (RDTF) is a group of selected participants in the NECA Traffic Sensitive (TS) and Common Line (CL) Pools. These companies represent approximately 37 percent of the TS Pool revenue and 34 percent of the CL Pool revenue. NECA uses the RDTF to develop cost characteristics representative of pooling companies and to facilitate the rate development process and provide supporting information for NECA tariff filings. NECA uses the RDTF because querying more than 1000 pool members is not practical or statistically necessary.

[21] Letter from Colin Sandy, NECA to Marlene H. Dortch, FCC, RM No. 10603 (Mar. 27, 2003) (*March 2003 Ex Parte Letter*).

[22] When the Commission amended its Part 69 rules to provide that ILECs assess no more than 5 SLCs for PRI ISDN service, the Commission also established a separate port charge

recovered via the Interstate Common Line Support (ICLS) mechanism. NECA estimates that this amount reflects the total impact for the industry, since there are only seven rate-of-return (ROR) carriers that are not in the Common Line pool and non-rate of return carriers are not entitled to ICLS. This ICLS change, which is necessary to "align the interstate rate structure more closely with the manner in which costs are incurred,"[23] is extremely small in comparison to the total size of the universal service fund and is clearly preferable to requiring customers of channelized T-1 services to continue to overpay.

The savings in SLC charges (up to $150 per T-1 per month or $1800 per year) will benefit existing rural customers of channelized T-1 services (and potential new customers) by making these services available at reasonable rates, thus furthering the Commission's universal service goals. However, the savings in SLC charges is not expected to be large enough to stimulate existing customers of other services to migrate to T-1 channelized services, due to the offsetting PBX equipment investment necessary to accomplish the change. Approval of this waiver will allow NECA member companies to offer services to new customers at more competitive rates and retain existing customers.

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to be assessed directly on ISDN users to recover the difference between the cost of an ISDN line card and the cost of a line card for basic, analog service. (*First Report and Order* at ¶ 115.) To be consistent with the treatment of ISDN, NECA anticipates that a separate port charge would similarly need to be developed for channelized T-1 services.

[23] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Federal State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 98-77, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613 at ¶3 (2001) (*MAG Order*).

V. CONCLUSION

Good cause having been shown, the Commission should grant the requested interim waiver to permit the application of no more than five SLC charges to T-1 interfaces for which the customer supplies the terminating channelization equipment, which is consistent with the treatment of functionally similar PRI ISDN.

Respectfully submitted,

August 19, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Petition for Expedited Waiver was served on this 19th day of August 2003 by electronic delivery or by first-class mail to the persons listed below.

By : /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

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